IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL **[LODGING]** NO.520 OF 2007
IN
SUMMONS FOR JUDGMENT NO.272 OF 2002
IN
SUMMARY SUIT NO.992 OF 2002

Mrs. Tilottama Vijay Lele .... Appellant
Vs.
Sudhir Dattaram Patil .... Respondent

Shri K.K.V. Kurup for the Appellant.

Shri N.W. Apte for the Respondent.

CORAM: R.M.S. KHANDEPARKAR &
S.R. SATHE, JJ.

DATED: JUNE 21, 2007

P.C:

1. Heard the learned Advocate for the appellant. The appellant challenges the order dated 20-3-2007 passed in Summons for Judgment No.272 of 2005 in Summary Suit No.992 of 2002. The impugned order is sought to be challenged on three grounds: firstly, that there are no dues payable to the respondent/plaintiff; secondly, there is no confirmation of the loan made by the appellant/defendant, and thirdly, there is a triable issue raised by the appellant in the reply filed to the summons for judgment.

2. Perusal of the impugned order discloses that in the affidavit in reply filed to the summons for judgment,

the appellant/defendant had chosen to remain totally silent as regards the confirmation of the loan stated to have been made on 7-6-2001 as revealed from the pleadings in the plaint. Though the appellant denied that the appellant does not owe any money to the respondent, in fact, the appellant had confirmed the loan being due to the respondent and the same was not denied or dealt with in the said affidavit in reply. Apparently therefore, there was no denial of the fact which was specifically pleaded by the respondent about the confirmation of the loan amount and the amount being due and payable to the respondent. Once the most relevant fact was not in dispute, it evidently discloses that the amount claimed by the respondent was, in fact, due and payable to the respondent by the appellant. In such circumstances, it cannot be said that there is any triable issue as such which would justify even the grant of leave to defend the proceedings. Nevertheless, the learned single Judge has granted leave, subject to deposit of an amount of Rs.6,00,000/-. Being so, we do not find any illegality or infirmity in the impugned order passed by the learned single Judge in imposing condition of deposit while granting the leave to defend the suit. Hence there is no case made out for interference in the impugned order. The appeal fails and is summarily rejected.

(S.R.Sathe, J.) (R.M.S.Khandeparkar, J.)

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